

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN JACKSON, JR.,

Petitioner,

- against -

W. PHILLIPS, Acting Superintendent,
Green Haven Correctional Facility,
and THE ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Respondents.

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AMENDED

REPORT & RECOMMENDATION

03 Civ. 2739 (SCR) (MDF)

TO: THE HONORABLE STEPHEN C. ROBINSON, U.S.D.J.

This matter is before the Court following the filing of further submissions by the parties in response to the Memorandum Order issued on August 20, 2007 (Doc. # 20). This Amended Report and Recommendation is intended to address the further grounds for habeas relief asserted by Petitioner both in his supplemental petition, which sought to challenge state court decisions on his N.Y. Crim. Proc. Law § 440.10 motion, and his amended petition, which sought to add further claims arising out of the state courts' denial of his application for a writ of error *coram nobis*.¹

Having reviewed the Supplemental Affidavit in Opposition, Supplemental Memorandum of Law, and Supplemental Appendix filed by Respondents (Doc. #'s 21-22), and the Affidavit in Reply filed by Petitioner (Doc. # 24), I renew my recommendation that this petition, including the supplemental and amended petitions, should be dismissed in its entirety. For the reasons set forth in the August 20, 2007 Memorandum Order at pages 1-3, the supplemental petition raises

¹In a Report and Recommendation dated July 13, 2004 (Doc. # 14), I recommended that the original petition for a writ of habeas corpus be dismissed in its entirety.

no grounds upon which habeas relief may be granted. Petitioner's Affidavit in Reply fails to provide a basis for finding that he is entitled to relief either with respect to his trial counsel's alleged ineffectiveness in failing to object to the jury instructions on the duty to retreat, or with respect to the jury instructions themselves. Similarly, the Memorandum Order at pages 3-12 sets forth the reasons why the amended petition, which is based on both his appellate counsel's failure to challenge the sufficiency of the evidence concerning depraved indifference murder as well as claims of constitutional violations based on the state rule of law concerning depraved indifference murder, raises no grounds upon which habeas relief may be granted, and the Affidavit in Reply provides no basis for deciding otherwise.²

CONCLUSION

Based on the foregoing, I respectfully recommend that Your Honor dismiss Petitioner's petition for a writ of habeas corpus in its entirety.

NOTICE

Pursuant to 28 U.S.C. § 636(b)(1), as amended, and Fed. R. Civ. P. 72(b), the parties shall have ten (10) days, plus an additional three (3) days, pursuant to Fed. R. Civ. P. 6(d), or a total of thirteen (13) working days (*see* Fed. R. Civ. P. 6(a)), from the date hereof, to file written objections to this Report and Recommendation. Such objections, if any, shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of The Honorable Stephen C. Robinson, at the United States Courthouse, 300 Quarropas Street, Room 621, White Plains, New York, 10601, and to the chambers of the undersigned at Room 434, 300 Quarropas Street, White

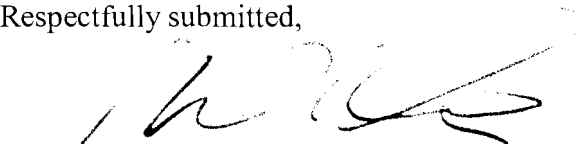
²Because my recommendation is based on the earlier Memorandum Order, I need not address the issue of timeliness of Petitioner's supplemental and amended petitions, which was raised by Respondents in their Supplemental Memorandum of Law.

Plains, New York 10601.

Failure to file timely objections to the Report and Recommendation will preclude later appellate review of any order to judgment that will be entered by Judge Robinson. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Frank v. Johnson*, 968 F.2d 298 (2d Cir.), *cert. denied*, 113 S. Ct. 825 (1992); *Small v. Secretary of H.H.S.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); *Wesolek v. Canadair, Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988). Requests for extensions of time to file objections must be made to Judge Robinson and should *not* be made to the undersigned.

Dated: July 30, 2008
White Plains, New York

Respectfully submitted,



MARK D. FOX
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Amended Report & Recommendation have been sent to the following:

The Honorable Stephen C. Robinson

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